

REMARKS

The Office Action dated October 4, 2007 has been reviewed, and the comments therein have been carefully considered. By this Amendment, Claims 7, 11-13, 16, and 17 have been amended. Claims 1-6 and 10 were previously cancelled without prejudice or disclaimer. Thus, Claims 7-9 and 11-17 are presently pending. Applicants respectfully request favorable reconsideration of this Application, as presently amended.

Objections to the Claims

The numbering of the claims has been amended in the manner suggested by the Examiner. Claims 7 and 13 have also been amended to correct minor antecedent basis issues.

Objections to the Specification

The specification was objected to for failure to provide proper antecedent basis for the subject matter of Claims 11 and 16, namely, the recitation of "microcomputer". Claims 11 and 16 have been appropriately amended to correct this deficiency.

The specification has also been amended to correct the listing of prior patent applications to which the present application claims benefit under 35 U.S.C. § 120. A petition under 37 CFR 1.78(a)(3) for unintentionally delayed benefit claim under 35 U.S.C. § 120 is also being filed herewith.

Claim Rejections under 35 U.S.C. § 112, first paragraph

Claims 12-17 stand rejected under 35 U.S.C. § 112, first paragraph as allegedly failing to comply with the written description requirement. Turning initially to Claim 12 and without acceding to the rejection, Claim 12 has been amended to revert to the original language of the claim. Accordingly, the rejection of Claim 12 is now moot. It is noted that the previous Office Action (mailed October 18, 2006) rejected original Claim 12 for alleged lack of antecedent basis for the terminology “said patient access.” However, antecedent basis for this terminology can be found in, for example, line 2 of Claim 7, upon which Claim 12 depends.

In the rejection of Claims 13-17, the Office Action specifies that the microprocessor is only recited in original claim 11 and is not discussed in the specification. However, the focus on the term “microprocessor” in the rejection is not understood, as none of the claims, as originally presented, recite a “microprocessor”. Further, the features recited in Claims 13-17 are similar to those recited in original Claims 7-12, and thus find basis in the application as originally filed. In addition, the features recited in Claims 13-17 would have been readily apparent to one of ordinary skill in the art upon reading the original specification (for example, see paragraphs [0185] – [0194] of the published application). Accordingly, Applicants maintain that Claims 13-17 are fully compliant with the written description requirement, and it is respectfully requested that the rejection of Claims 13-17 under 35 U.S.C. 112, first paragraph be withdrawn.

Claim Rejections Under 35 U.S.C. § 102(e)

Claims 7-9 and 11-17 stand rejected under 35 U.S.C. 102(e) as being anticipated by Collins et al. (USP 6,406,631). According to MPEP § 706.02(f)(1), the §102(e) date for a patent claiming the benefit of an international application filed before November 29, 2000 is the §371(c)(1),(2), and (4) date of the international application or the filing date of the patent if the international application never entered the national stage. The Collins et al. patent issued directly from a continuation-in-part application claiming benefit to international application PCT/US99/17468, which was filed prior to November 29, 2000 and entered the national stage as U.S. Application No. 09/485,778, with a §371/§102(e) date of March 1, 2000. Thus, the §102(e) date for the Collins et al. patent is March 1, 2000. Applicants have previously claimed the benefit under 35 U.S.C. § 120 of U.S. Application No. 09/513,773, filed on February 25, 2000. Accordingly, Collins et al. fails to qualify as prior art under 35 U.S.C. § 102(e).

Double Patenting

Claims 7-12 were rejected in the previous Office Action (mailed October 18, 2006) under 35 U.S.C. § 101 as claiming the same invention as that of Claims 7-12 of prior U.S. Patent No. 6,595,943. Without acceding to the rejection, Claim 7 has been amended to further differentiate from Claim 7 of U.S. Patent No. 6,595,943. In particular, Claim 7 now recites that the sensor is located upstream of the pump and downstream of the patient access. Support for this feature can be found, for example, in paragraph [0194] of the published application. Thus, Claims 7-12, as presently amended, distinguish from Claims 7-12 of U.S.

Patent No. 6,595,943. A Terminal Disclaimer has also been filed herewith to further obviate any obviousness-type double-patenting rejection.

Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully submit that this application is in condition for allowance, and an early Notice of Allowance is respectfully requested.

Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact the undersigned to expedite prosecution of this application.

The Commissioner is hereby authorized to charge to Deposit Account No. 50-1165 (T4342-14198US21) any fees under 37 C.F.R. §§ 1.16 and 1.17 that may be required by this paper and to credit any overpayment to that Account. If any extension of time is required in connection with the filing of this paper and has not been separately requested, such extension is hereby requested.

Respectfully submitted,

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